

section. Unless the Board is administering the foreign marketing program, such activities shall not be eligible for Credit-Back unless the handler certifies that he/she was not and will not be reimbursed by either FAS or the CDFA for the amount claimed for Credit-Back, and has on record with the Board all claims for reimbursement made to FAS and/or the CDFA. Foreign market expenses paid by third parties as part of a handler's contract with FAS or CDFA will not be eligible for Credit-Back.

(6) A handler must file claims with the Board to obtain Credit-Back for promotional expenditures, as follows:

(i) All claims submitted to the Board for any qualified activity must include:

(A) A description of the activity and when and where it was conducted;

(B) Copies of all invoices from suppliers or agencies;

(C) Copies of all canceled checks issued by the handler in payment of these invoices; and

(D) An actual sample, picture or other physical evidence of the activity.

(ii) Handlers may receive credit against their assessment obligation up to the advertising amount of the assessment installment due: *Provided*, That handlers submit the required documentation for a qualified activity at least 2 weeks prior to the mailing of the Board's first and second assessment notices, and at least 3 weeks prior to the mailing of the Board's third and fourth assessment notices in a crop year: *Provided further*, That promotional activities conducted during the 1998-99 crop year must be conducted and documented at least 2 weeks prior to the mailing of the Board's fourth assessment notice in order to receive credit. In all other instances, handlers must remit the advertising assessment to the Board when billed, and a refund will be issued to the extent of proven, qualified activities.

(iii) Checks from the Board in payment of approved Credit-Back claims will be mailed to handlers on February 15, April 15, June 15, and 30 days after submission of final claims for the crop year pursuant to paragraph (e)(6)(iv) of this section. To receive payment on these dates, handler claims must be

submitted, with all required elements, at least one month prior to the payment date. A handler can receive Credit-Back for his/her allowable direct expenditures only up to the amount of that portion of the handler's assessment designated for marketing promotion, including paid advertising.

(iv) A statement of the Credit-Back commitments outstanding as of the close of a crop year must be submitted in full to the Board within 15 days after the close of that crop year. Final claims pertaining to such commitments outstanding must be submitted within 76 days after the close of that crop year: *Provided*, That for activities conducted during the 1998-99 crop year, final claims pertaining to such commitments outstanding must be submitted within 105 days after the close of the crop year. All other final claims for which no statement of Credit-Back commitments outstanding has been filed must be submitted by August 15 of that calendar year.

(f) *Appeals*. If a determination is made by the Board staff that a particular promotional activity is not eligible for Credit-Back because it does not meet the criteria specified herein, or for any other reason, the affected handler may request the Public Relations and Advertising Committee to review the Board staff's decision. If the affected handler disagrees with the decision of the Public Relations and Advertising Committee, the handler may request that the Board review the Committee decision. If the handler disagrees with the decision of the Board, the handler, through the Board, may request that the Secretary review the Board's decision. Handlers have the right to request anonymity in the review of their appeal. The Secretary maintains the right to review any decisions made by the aforementioned bodies at his/her discretion.

[59 FR 35233, July 11, 1994, as amended at 64 FR 41028, July 29, 1999; 64 FR 58766, Nov. 1, 1999]

#### § 981.442 Quality control.

(a) *Incoming*. Pursuant to § 981.42(a), the quantity of inedible kernels in each

variety of almonds received by a handler, including almonds of his own production, shall be determined and disposed of in accordance with the provisions of this paragraph.

(1) *Sampling.* Each handler shall cause a representative sample of almonds to be drawn from each lot of any variety received. The sample shall be drawn before inedible kernels are removed from the lot, or the lot is processed or stored by the handler. For receipts at premises with mechanical sampling equipment and under contracts providing for payment by the handler to the producer for sound meat content, samples shall be drawn by the handler in a manner acceptable to the Board and the inspection agency. The inspection agency shall make periodic checks of the mechanical sampling procedures. For all other receipts, including but not limited to field examination and purchase receipts, accumulations purchased for cash at the handler's door or from an accumulator, or almonds of the handler's own production, sampling shall be conducted or monitored by the inspection agency in a manner acceptable to the Board. All samples shall be bagged and identified in a manner acceptable to the Board and the inspection agency.

(2) *Variety.* For the purpose of classifying receipts by variety to determine a handler's disposition obligation, "variety" shall mean that variety of almonds which constitutes at least 90 percent of a lot. If no variety constitutes at least 90 percent of the almonds in a lot, the lot shall be designated as "mixed". If the variety which constitutes at least 90 percent of the almonds in the lot is unknown, the lot shall be designated "unknown".

(3) *Analysis of sample.* Each sample shall be analyzed by or under the surveillance of the inspection agency to determine the kernel content and the proportion of inedible kernels in the sample. The inspection agency shall prepare a report for each handler showing, by variety, the total adjusted kernel weight received by handler, the inedible kernel weight and any other information as the Board may prescribe. The report shall cover the handler's daily receipt or the handler's total receipts during a period not exceeding

one month, and shall be submitted by the inspection agency to the Board and the handler.

(4) *Disposition obligation.* (i) The weight of inedible kernels in excess of 1 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. For any almonds sold inshell, the weight may be reported to the Board and the disposition obligation for that variety reduced proportionately.

(ii) If a sufficient sample is not available for any lot of almonds, the handler may establish and substantiate, to the satisfaction of the Board, the received weight, the edible and inedible kernel weights, and the adjusted kernel weight by providing sufficient information as the Board may prescribe. If the handler is only able to establish and substantiate the approximate received weight, an inedible disposition obligation of 10 percent of such received weight may be applied, upon agreement between the Board and the handler.

(5) *Meeting the disposition obligation.* Each handler shall meet its disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users. Handlers shall notify the Board at least 72 hours prior to delivery: *Provided,* That the Board or its employees may lessen this notification time whenever it determines that the 72 hour requirement is impracticable. The Board may supervise deliveries at its option. In the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which case the Board would certify the disposition lot and report the results to the USDA. For dispositions by handlers with mechanical sampling equipment, samples may be drawn by the handler in a manner acceptable to the Board and the inspection agency. For all other dispositions, samples shall be drawn by or under the supervision of the inspection agency. Upon approval by the Board and the inspection agency, sampling may be accomplished at

the accepted user's destination. The almond meat content of each delivery shall be determined by the inspection agency and reported by the inspection agency to the Board and the handler and credited to the handlers's disposition obligation on ABC Form 8. Deliveries containing less than 50 percent almond meat content shall not be credited against the disposition obligation. Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than August 31 succeeding the crop year in which the obligation was incurred.

(6) *Inedible almonds unfit for processing.* All lots received from growers as "inedible almonds unfit for processing," shall be exempt from the requirements of paragraphs (a) (1) and (3) of this section, but shall be disposed of in their entirety (other than as pickouts), as provided in paragraph (a)(5) of this section. Disposition of these lots shall not be credited toward the disposition obligation of paragraph (a)(4) of this section. If a grower sells or ships inedible almonds to a person other than a handler, the grower thereby becomes a handler and subject to all the requirements of this paragraph.

(7) *Accepted Users.* An accepted user's eligibility shall be subject to the following criteria:

- (i) Completion of an application with the Board for accepted user status;
- (ii) Submission of a business data sheet to the Board; and
- (iii) The accurate and prompt submission of ABC Form 8 Part B to the Board for each lot of almonds received, supported by a public weighmaster weight certificate issued at the request of the accepted user at the time of receipt.
- (iv) The Board may deny or revoke accepted user status at any time if the applicant or accepted user fails to meet the terms and conditions of § 981.442, or if the applicant or accepted user fails to meet the terms and conditions set forth in the accepted user application (ABC Form 34).

The eligibility of accepted users shall be reviewed annually by the Board. Handlers will not receive credit towards their disposition obligations pur-

suant to paragraph (a)(4) of this section for lots where the difference between the weight of the lot reported by the inspection agency on ABC Form 8 and the weight of the lot reported on the public weighmaster weight certificate exceeds 2.0 percent.

[42 FR 3160, Jan. 17, 1977, as amended at 43 FR 47969, Oct. 18, 1978; 44 FR 30075, May 24, 1979; 44 FR 67077, Nov. 23, 1979; 49 FR 40788, Oct. 18, 1984; 50 FR 47708, Nov. 20, 1985; 51 FR 36383, Oct. 10, 1986; 52 FR 45608, Dec. 1, 1987; 53 FR 26424, July 13, 1988; 56 FR 65420, Dec. 17, 1991; 59 FR 13434, Mar. 22, 1994; 61 FR 42991, Aug. 20, 1996; 62 FR 37488, July 14, 1997; 63 FR 41711, Aug. 5, 1998]

#### § 981.450 Exempt dispositions.

As provided in § 981.50 any handler disposing of almonds for crushing into oil, or for poultry or animal feed, may have the kernel weight of these almonds excluded from his receipts, and exempt from program obligations so long as the handler qualifies as, or delivers such almonds to, a crusher, a feeder, or dealer in nut waste; the crusher, feeder, or dealer are acceptable to the Board; each delivery is made directly to the crusher, feeder, or dealer, by June 30 of the crop year; and each delivery is certified to the Board by the handler on ABC Form 8.

[42 FR 19322, Apr. 13, 1977]

#### § 981.455 Interhandler transfers.

(a) *Transfers of almonds.* Interhandler transfers of almonds pursuant to § 981.55 shall be reported to the Board on ABC Form 7. The report shall contain the following information: (1) Date of transfer; (2) the names, and plant locations of both the transferring and receiving handlers; (3) the variety of almonds transferred; (4) whether the almonds are shelled or unshelled; and (5) the name of the handler assuming reserve and assessment obligations on the almonds transferred. ABC Form 7 shall be signed by the transferring handler and by the receiving handler if the latter is assuming the obligation(s).

(b) *Transfers of reserve credits.* A handler may transfer reserve credits to another handler after having filed with the Board, in accordance with § 981.474, a completed ABC Form 13/14 covering